



LIBRARY OF CONGRESS

Copyright Office

Docket No. 2014-1

Strategic Plan for Recordation of Documents

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The United States Copyright Office is requesting public comment on proposed key elements relevant to reengineering the function of recording documents pertaining to copyright pursuant to 17 U.S.C. 205. In a separate notice that will be published soon, the Office will also announce a series of public hearings on these elements, scheduled shortly after the end of the comment period on this Notice of Inquiry. The elements have been developed with the aid of previous comments obtained during the Office's two-year Special Projects process, particularly the Special Project on Technical Upgrades to Registration and Recordation Functions. (That Project's Notice of Inquiry and the comments received in response are available at http://www.copyright.gov/docs/technical_upgrades/.)

In particular, the Office is seeking comment and holding public hearings on the following elements: (1) A guided remitter responsibility model of electronic recordation; (2) the use of structured electronic documents that contain their own indexing information; (3) the linking of recordation records to registration records; (4) the use of standard identifiers, and other metadata standards, in recorded documents and the catalog of such documents; and (5) potential additional incentives to record documents pertaining to copyrights. Further explanation of these elements is to be found below in the "Supplementary Information" section of this Notice.

The Office appreciates in particular comments from parties who record documents and the professionals who assist them in doing so; from parties experienced with electronic recordation in other areas, such as that of real property; from those who maintain databases of copyrighted works for licensing or other purposes; from those who have developed or are developing metadata standards for copyright management purposes; and from those who use the Copyright Office's catalog and collection of recorded documents for any purpose.

DATES: Comments on the Notice of Inquiry and Requests for Comments are due on or before March 15, 2014. The Office will hold public hearings on the east and west coasts following the close of the public comment period on dates to be determined.

ADDRESSES: All comments shall be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at <http://www.copyright.gov/docs/recordation>. The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, all comments must be uploaded in a single file in either the Portable Document File (PDF) format that contains searchable, *accessible* text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202-707-8350 for special instructions.

FOR FURTHER INFORMATION CONTACT:

Robert Brauneis, Abraham L. Kaminstein Scholar in Residence, by email at *USCOreration@loc.gov*, or call the U.S. Copyright Office by phone at 202–707–9536.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1870, the Copyright Office has recorded documents pertaining to copyright, such as assignments, licenses, and grants of security interests in works under copyright. It has accepted such copyright-related documents from remitters for recordation; returned documents marked as recorded to remitters; made copies of those documents permanently available for public inspection; and ensured the preparation of indexes to assist the public in finding relevant documents. Congress has encouraged the recordation of copyright-related documents by bestowing certain legal advantages on recorded documents. In some cases, such as that of notices of terminations of transfer, it has required the filing of documents as a condition of their legal effectiveness. A principal purpose of these incentives and requirements is to ensure that those who are interested in licensing, purchasing, or gaining security interests in works under copyright can learn of the current state of the titles in those works. Thus, the Copyright Office has an important interest in ensuring that the public record of copyright transactions is as complete and as accurate as possible.

In 1870, documents remitted for recordation arrived at the Copyright Office in paper form, and Copyright Office employees prepared index or catalog entries for those documents by manually transcribing selected information from the documents. Almost 150 years later, that is still the case. Many other aspects of the recording process have changed. Recorded documents

used to be manually transcribed in full; they now are scanned and stored electronically. The index to recorded documents used to appear in the front of bound volumes or on index cards; it is now maintained as part of an online electronic database known as the Copyright Office Catalog, which also contains copyright registration records. Yet documents must still be remitted for recordation in paper form, and Office employees must still read and interpret those documents and manually transcribe selected information from them to create catalog entries in the Copyright Office Catalog. In this respect, the Copyright Office's document recordation service has lagged behind its copyright registration service. The Office began accepting registration applications online in July 2008, but for budgetary reasons it dropped plans to reengineer recording services. Thus, modernizing and improving recordation services is a top concern of the Copyright Office.

II. Discussion

Over the past two years, the Copyright Office has sought comments on technological upgrades to the recordation function, and has held focused discussions with copyright owners, users of copyright records, technical experts, public interest organizations, lawyers, and professional and industry associations. Participants in that process have expressed a number of serious concerns about the current recordation system, and have offered a variety of helpful suggestions for improvement.

A. Leading Concerns about Recordation. The most prominent recurring concerns about document recordation are cost, processing time, inconvenience of remitting, and cataloguing inaccuracies.

1. Cost. Because recordation has remained labor-intensive while many other Copyright Office functions have increased in efficiency, recordation has become relatively more expensive.

While for many decades the basic recordation and registration fees were the same, the most basic recordation fee is now over two times that of the most basic registration fee. That fee difference is a direct result of estimates of the cost of performing those services. Stakeholder comments reveal serious concerns about the fee level for recordation. They also reveal that high fees have deterred some from recording documents altogether, and have caused others to take actions that leave significant gaps in the public record. Those actions include recording transfers for large numbers of works without specifically identifying them, and submitting new registrations for previously registered works in the name of assignees rather than recording transfer documents.

2. Processing Time. Many who remit documents to be recorded have also expressed serious concerns about the time needed for processing remitted documents. They have noted that it can take a year or longer for the Copyright Office to return a remitted document marked as recorded, and that it can take even longer for information about the document to become available online in the Copyright Office Catalog. Comments have suggested that the longest delays are caused by the need to transcribe manually the titles of works to which a remitted document pertains.

3. Inconvenience of Remitting. Document remitters have also expressed concerns about the difficulty and inconvenience of remitting documents for recordation, and about the mismatch between Copyright Office requirements and their own business practices. Many remitted documents are originally produced electronically in a word processing format, and could easily be saved in a cross-platform format such as Adobe Portable Document Format and transmitted electronically to the Copyright Office for recording. Other documents could be scanned and transmitted electronically. However, the Copyright Office currently only accepts paper documents, so document remitters must print all documents and send them in paper form to the Copyright Office, which increases the labor and cost involved in recording. The Copyright

Office also currently requires an actual “wet” signature on either the remitted document or on an accompanying certification. Some copyright transactions are now accomplished with electronic signatures, and remitters must therefore prepare special versions of the documents with actual signatures on paper solely for purposes of recording. This also contributes to the difficulty and cost of recording.

4. Cataloguing Inaccuracies. The existing system of preparing Copyright Office Catalog records for recorded documents through manual transcription from paper documents also results in significant numbers of inaccuracies in those records. Commenters have complained about such inaccuracies as typographical errors in names and titles; incorrectly transcribed registration numbers; incorrectly transcribed dates; and incorrect indexing of titles under “the” and other articles. Such inaccuracies can cause users of the Catalog to miss documents relevant to their concerns, or to gain mistaken impressions of the nature of those documents.

B. Concerns regarding the optimum identification of works to which recorded documents pertain. Stakeholders have expressed a number of related concerns regarding how works are identified in recorded documents. These include concerns about whether documents concerning particular works can be located at all; whether document records can be linked to registration records pertaining to the same works; and whether Copyright Office records can be integrated with information about works derived from other sources.

1. Identification of works to which recorded documents pertain. Given current requirements, incentives, and practices, it is sometimes very difficult to identify specific works the ownership of which is affected by recorded documents. Under current law and regulations, documents will be accepted for recordation whether or not they identify particular works the ownership of which they affect. A document will be rejected for lack of work identification only

if the omission of an identifier renders the document incomplete on its face – when, for example, the document refers to a list of title in an Appendix that is missing. Sections 205(c) and 205(d) of the Copyright Act do create incentives to identify a work to which a document pertains by title or registration number. Section 205(c) provides that a recorded document provides constructive notice of the facts stated in it only if the document or an attachment “specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work.” 17 U.S.C. § 205(c). Section 205(d) provides that only those transfers recorded in such a manner to give constructive notice under section 205(c) will be protected against conflicting transfers. 17 U.S.C. § 205(d).

Commenters have questioned the usefulness of these incentives in practice. Fewer than half of the works that have been specifically identified in recorded documents since 1978 are identified by registration number. While virtually all specifically identified works are identified by title, there is no requirement that a title be unique. Moreover, many works are not generally known by the titles that are submitted as identification. The titles submitted for photographs, for example, are often no more than strings of digits, which are not helpful for search purposes.

2. The linking of document records with registration records. Since 1978, document remitters have identified by copyright registration number almost four million works affected by remitted documents. However, remitters have submitted those registration numbers in many different formats, which often differ in matters of spacing, hyphenation, and other punctuation from the official format used by the Copyright Office. Each registration number is transcribed into the Copyright Office Catalog in exactly the format in which that the remitter submitted it, and document specialists do not verify that the number submitted is a valid registration number.

As a result, the Copyright Office Catalog does not contain links between recorded documents and registrations, and even valid registration numbers found in document records may need to be reformatted before they can be used to locate related registration records. This can render it more difficult to make a positive identification of a work affected by a recorded document, and to locate all documents affecting title in a work.

3. Integration of Copyright Office records with information about works from other sources. There are many privately maintained databases that contain information about large numbers of works under copyright. These include databases maintained by various types of rights management organizations such as ASCAP, BMI, SESAC, the Copyright Clearance Center, the Harry Fox Agency, and Art Resource; by companies that own and license large numbers of copyrighted works, such as Getty Images and Corbis; and by music identification app developers such as Shazam, Midomi, and SoundHound. None of the records contained in these databases is currently linked to registration or document records in the Copyright Office Catalog. The lack of such links means that users of the privately-maintained databases cannot easily find Copyright Office records about the works represented in those databases, and users of the Copyright Office Catalog cannot easily find licensing information contained in the privately-maintained databases, thus making Copyright Office records less commercially useful and relevant.

Links between databases are impeded due to the lack of common work identifiers and metadata standards. Although some recorded documents may include standard work identifiers such as International Standard Musical Work Codes (ISWCs) and International Standard Text Codes (ISTCs), document records in the Copyright Office Catalog do not include these numbers. Registration records in the Copyright Office Catalog may include standard work identifiers, but

only about a million of them do, out of over seventeen million records, and many of these codes do not strictly speaking represent works. Rather, they represent physical deposits, such as books identified by International Standard Book Numbers (ISBNs).

C. Concerns about the Sufficiency of Statutory Incentives to Record Transactions.

Existing statutory incentives to record documents pertaining to copyright are limited to protection against conflicting transfers and nonexclusive licenses under conditions specified by section 205(d) of the Copyright Act, provision of constructive notice under section 205(c) of the Act, and under the interpretation of some courts, perfection of security interests in registered works. In 1989, Congress removed the requirement to record any documents in the chain of title from a work's author to an owner of that work as a precondition of that owner filing an infringement action. Commenters have questioned whether the remaining incentives to record are sufficient to induce parties to significant copyright transactions to disclose them, and thus to ensure that those who are interested in licensing, purchasing, or gaining security interests in works under copyright can learn of the current state of titles in those works.

III. Subjects of Inquiry

In response to the concerns articulated above, the Copyright Office is currently considering several specific elements of a strategic plan for improvement of recordation services, and for improvement of the quality of copyright information provided to the public through recordation. The Office is particularly interested in comments on the following key elements:

1. A Guided Remitter Responsibility Model of Electronic Recordation. As noted above, the high cost and long processing time currently associated with copyright document recordation stem in large part from a process in which recordation specialists must read paper documents and manually transcribe selected information from them to electronic catalog records that become

part of the Copyright Office Catalog. Electronic submission of such information by remitters could certainly reduce the time need to process a document for recordation. However, checking information submitted electronically by remitters against each remitted document itself would still be a time-consuming process. Remitted documents do not come in any particular format, and there is no single standard for the language used in those documents or the order in which documents use language with legal effect. As a result, recordation specialists would still have to spend substantial time reading and interpreting the documents to check submitted catalog entry information, such as the names of the two or more parties to the transaction, the role of the parties as grantors or recipients of the interests being transferred, the nature of the interests that are being transferred, and the titles, registration numbers, or other identifiers of the works in which interests are being transferred.

Because of the process of comparing submitted catalog information against each individual remitted document is irreducibly time-consuming, the Copyright Office is considering adopting a model under which remitters would be responsible in the first instance for the accuracy of the catalog information that they submit electronically. Recordation specialists would not check that information against remitted documents on a case-by-case basis, but would rather engage in systemic quality control, performing targeted spot checks and continuously refining predictive models of which inaccuracies were likely to occur in which types of documents.

While remitters might be worried that inadvertent errors would go uncorrected, electronic submission of information allows for a variety of types of guidance that would greatly reduce the number of inaccuracies entering the Copyright Office Catalog. For example, when a limited number of answers to a question are valid, electronic forms can provide enumerations such a drop-down boxes or buttons, rather than empty fields, to eliminate entries that are invalid or

contain typographical errors. Many entries can be validated against lists of valid values or templates of valid formats, and rejected or questioned if the entries are not found in the lists or entered in valid formats. Crucial information can be required to be entered twice, and consistency between the entries can be checked. Parties that record documents frequently could carefully enter repeated information such as names and addresses once, and then access that stored information when recording subsequent documents, to ensure consistency between catalog entries. Such a guided remitter responsibility model could reduce the cost of recordation to a small fraction of the current cost. Electronic recordation fees would be reduced accordingly. Paper-based recordation would continue to be available, but the fee would likely be a multiple of several times that of electronic recordation.

The Copyright Office is seeking comments on this model of electronic recordation. Comments are welcome, not only on features that are unique to this particular model, but on features that are common to electronic recordation more generally, and that would require statutory or regulatory amendment. These include the acceptance of electronic signatures and the protection of personally identifiable information.

2. Structured Electronic Documents. The Copyright Office is also considering whether to adopt standards for and accept structured electronic documents in which tagged indexing or cataloging information is integrated into the documents themselves. Such documents contain several linked layers or folders. The name of a granting party displayed in the sentence that grants an interest in a copyrighted work, for example, is drawn from a field that identifies that name as a granting party name for cataloguing purposes.

Many government agencies that record documents conveying interests in real property have adopted standards for and are accepting such structured electronic documents. However, many

of those agencies record millions of documents a year, whereas the Copyright Office currently records fewer than 15,000 documents a year, though those documents represent transactions involving several hundred thousand works. Moreover, a relatively small number of intermediaries – banks and title insurance companies – are involved in almost every real estate transaction, which makes the adoption and implementation of standards relatively easy, while fewer copyright transactions seem to involve such intermediaries. The Copyright Office is seeking comments on the feasibility of adopting standards for and accepting structured electronic documents pertaining to copyright.

3. Linking of Document Records to Registration Records. The Office is considering whether it should link records of documents pertaining to registered works to the registration records for those works. In particular, it is seeking comments on whether it should require by regulation that document remitters provide registration numbers in a standardized format for all registered works to which their documents pertain.

4. Use of Standard Identifiers and Other Metadata Standards. The Office is considering whether it should adopt incentives or requirements with respect to the provision of standard identifiers, such as International Standard Musical Work Codes and International Standard Audiovisual Numbers, in recorded documents. Comments are welcome regarding the degree to which the provision of such identifiers would aid in uniquely identifying affected works and in linking Copyright Office Catalog information about works to other sources of information about such works. Comments are also welcome on whether such incentives or requirements might be more appropriate or helpful with regard to some types of works than with regard to others. The Office is also considering whether it should adopt or ensure compatibility with metadata

standards more broadly, and welcomes comments on the utility of metadata standards and on particular metadata projects that it should consider.

5. Additional Statutory Incentives to Record Documents Pertaining to Copyright. A number of academic commentators have proposed that Congress create additional incentives or requirements for recording documents pertaining to copyright. Congress could reinstate the requirement, dropped in 1989, of recording all documents in the chain of title from the author to the current owner of copyright as a precondition of filing in infringement lawsuit. It could also condition the provision of certain remedies, such as statutory damages and attorneys' fees, on the recordation of any and all documents that transferred ownership of works to those eligible to sue for infringement at the time infringement commenced. Perhaps the broadest proposal is to provide that no transfer of a copyright interest will be valid unless a note or memorandum of that transfer is recorded with sufficient description of the interest granted and identification of the parties from and to whom the interest is granted. The Copyright Office is seeking comment on the benefits and costs of such proposals, and on their compatibility with the treaty commitments of the United States.

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Register of Copyrights

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